

23 September 2019

Submission by email to response@hkex.com.hk

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Dear Sirs

Re: Consultation Paper on Codification of General Waivers and Principles Relating to IPOs and Listed Issuers and Minor Rule Amendments issued in August 2019 (the “Consultation Paper”)

Objection to codify the waiver described in paragraph 71 in respect of the experience and qualification of company secretary into the Rules.

Terms and expressions used herein shall have the same meanings ascribed to them under the Consultation Paper unless otherwise defined.

I would put forth below my opinion to the paragraphs 68 to 71 of the Consultation Paper.

Issues under Paragraph 68

- **Unfamiliar with the Listing Rules and other relevant law and regulations in Hong Kong**

Pursuant to Main Board Rule 3.28 requires a company secretary of an issuer to:

- (i) possess certain academic or professional qualifications, or relevant experience to be considered capable of discharging the functions of company secretary; and
- (ii) be familiar with securities regulation in Hong Kong (i.e. the Listing Rules and other relevant law and regulations including the Securities and Futures Ordinance, Companies Ordinance, Companies (Winding Up and Miscellaneous Provisions) Ordinance, and the Takeovers Code.

According to Section F to Corporate Governance Code, the company secretary is responsible for

- (i) advising the board on governance matters; and
- (ii) should be an employee of the issuer and have day-to-day knowledge of the issuer’s affairs.

Given the above, one would interpret that:

For anyone to perform the fundamental duties of a company secretary on advising the board on **governance matters (specifically the compliance of the Listing Rules and other relevant law and regulations in Hong Kong)**, one must possess the academic or professional qualifications or relevant experience required for the position, **ON TOP OF** the individual’s “familiarity with the issuer’s business affairs” and **REGARDLESS** “the issuer’s principal business activities primarily outside Hong Kong”

On understanding of the basic prerequisites for company secretary, one would expect the Exchange not to accept anyone less than what are required. If this is the stance of the Exchange, I could not see any clear explanation in the Consultation Paper to why “an individual’s familiarity with the issuer’s business and affairs” or “the issuer’s principal business activities primarily outside Hong Kong” while **missing** such important familiarisation with securities regulation in Hong Kong is now sufficient to fulfil the requirements under Rule 3.28.

Anyone who failed to meet the basic requirements under Rule 3.28, he/she should simply not take up the position of named company secretary of a listed issuer (as crystal clear as that), regardless how he/she is familiar with the business and affairs of the issuer or potential IPO applicant, and no matter all its principal activities are outside Hong Kong.

Individuals “*who lacks familiarisation with securities regulations in Hong Kong*” is indeed an issue that Must Not be underrated in the first place.

Issues under paragraphs 69

- **Prior waiver given on the condition that the Proposed Company Secretary must be assisted by a person who possesses the qualifications or experience**

Major corporate governance practices for companies listed in Hong Kong involve **hands-on experience** in determining and executing the continuing obligations, notifiable transactions, connected transactions and well-versed with Corporate Governance Code. The regulatory development driven by the Exchange further demands expanded professional skill sets to facilitate “Risk Management” and “ESG Reporting” for listed issuers.

Given the complexity of the corporate governance practices nowadays, the company secretaries should be playing a primary role on **implementing the day-to-day practical governance** to listed issuers. **They are performing the first line of defense in enforcing regulatory compliance with the Listing Rules in the listed corporations on behalf of the Exchange.** The critical role that is meant to uphold the Listing Rules, protect investors/minority shareholders’ interests and maintain the quality of issuers listed on SEHK.

Instead of tightening the requirements for the role of company secretary, choosing to waive any Proposed Company Secretary of the necessary qualification and experience is undermining the Exchange’s efforts in promoting good corporate governance among the listed issuers. It is a common sense to note if only the condition that the Proposed Company Secretary be “assisted by a person who possesses the qualifications or experience”, all the key regulatory functions of a company secretary will automatically be placed and performed by the “assistant” instead of the so-called “company secretary”, almost for sure. The Proposed Company Secretary will of course **never learn** to “*acquire the relevant experience required under the Listing Rules over time*” as the Exchange might expect. In practice, the board of directors or senior executives of listed issuers are unlikely bother to consult the opinion of the “assistant” on any corporate issues. Even if someone is serious enough to check and raise questions regarding corporate governance issues with the qualified assistant, who should they listen to if there is difference in opinion between the

unqualified company secretary and the qualified assistant? Are you trying to create office politics to listed issuers?

I'm afraid the Exchange's expectation that when assisted by a Qualified Person "enables the Proposed Company Secretary to perform the regulatory functions of a company secretary and acquire the relevant experience required under the Main Board Rules (in particular, the familiarity with the relevant regulatory requirements) over time" is just a wishful thinking. It is unclear where this expectation came from any source.

Issues under paragraphs 70

- **The length of waiver Period depending on various factors should not be longer than three years**

"The length of the Period will depend on

- (i) the Proposed Company Secretary's experience in handling company secretarial matters and his/her relevant professional qualifications and/or academic background;*
- (ii) the measures and systems in place to facilitate the Proposed Company Secretary in discharging his/her duties as a company secretary; and*
- (iii) the issuer's regulatory compliance and/or material deficiencies/weaknesses in internal controls."*

Let's discuss each of the above factors one by one.

Factor (i) – I would instead propose to make necessary modification to the existing Note 2 to Rule 3.28 when the Exchange considers as the factors to assess "**relevant experience**".

Suggestion to rewrite existing Note 2 (a) & (d) to Rule 3.28

- (a) length of employment with the issuer and other issuers and the roles he played "in handling corporate governance matters"**
- (d) "relevant" professional qualifications in other jurisdictions "and/or relevant academic background"***

**For example, an individual who holds a master degree in corporate governance.*

Factor (ii) – "The measures and systems in place" is something that any listed issuer should have to facilitate its own staff to perform his/her duties, not just the Proposed Company Secretary. This should be so without saying the obvious. It is not making sense if the Exchange expects any **less** measures and systems a listed issuer may have in place if it has a Qualified Person as its company secretary.

Factor (iii) – I would ask, 'How is the Exchange going to assess *the issuer's regulatory compliance and/or material deficiencies/weaknesses in internal controls?*' Will the Exchange send a professional team to do a due diligence on the issuer's internal control system, or what? How much time and resources does the Exchange prepare to do the job in order to prove if there is no

material deficiencies or weaknesses in internal controls and/or regulatory compliance? And, is this practical to do so?

*“The Exchange considers that the Period should not be longer than three years as the Proposed Company Secretary is **generally expected** to be able to acquire the relevant qualification or experience required under Main Board Rule 3.28 within three years.”*

If I may ask ‘What mechanism does the Exchange have in place to check, verify and prove if the Proposed Company Secretary has already possessed the qualifications or relevant experience as mandatorily required under Rule 3.28 after the maximum Period of 3 years?’ Give him/her an examination to seat for and to see how they score? If not, what kind of evidence of proof to provide in order to support him/her meeting the mandatory requirements? Should the key issue here be not about how long is the length of the Period, but the black-and-white basic individual-specific requirements for anyone to be appointed as company secretary under Rule 3.28?

Proposal under paragraph 71

We propose to codify into the Rules that the Exchange may grant a Main Board Rule 3.28 waiver to an issuer taking into account the following:

- (i) whether the issuer has principal business activities primarily outside Hong Kong;*
- (ii) the reasons why the directors consider the individual to be suitable to act as the issuer’s company secretary; and*
- (iii) whether the Proposed Company Secretary will be assisted by a Qualified Person throughout a period of not more than three years, the length of which may depend on factors as discussed in paragraph 70 above.*

Again, let’s address each of the above factors one by one.

Factor (i) – As discussed above, “whether the issuer has principal business activities primarily outside Hong Kong” is **irrelevant** to the specific requirements under Rule 3.28. **The rule should be specific to the “individual” to be appointed as company secretary for any company listed on the Exchange, not about the circumstantial conditions of the company, if I interpret the rule correctly.**

Factor (ii) – This seems like an open-ended question. The directors can have numerous reasons to consider the individual to be suitable to act as the issuer’s company secretary. The issue here goes back to the question, ‘What kind of standards are there for the judgement?’ This is too far-fetched and unsubstantiated.

Factor (iii) – As discussed, it is not the length of time the Proposed Company Secretary has been assisted by a Qualified Person, the spirit of Rule 3.28 is whether the Proposed Company Secretary indeed ultimately meets the basic requirements under the rule.

Why should there be any grace period given for a Proposed Company Secretary to learn and acquire the necessary knowledge and experience when occupying the official position of company secretary as if a properly Qualified Person? **This is an unfair practice.** It doesn't matter how long or how short the period shall take, only the moment an individual has satisfied the clear mandatory requirements under Rule 3.28, then he/she can then be qualified as the company secretary of a listed issuer. The proper route for an unqualified individual to become a company secretary is to obtain the required professional qualifications under Note 1 of Rule 3.28. That is it.

Company Secretaries today are serving as the bridge between the board, the management, the company, the shareholders/investors/general public and the regulators. He/She is the key preachers of good corporate governance and keepers of good corporate structure among the listed issuers. Only Qualified Persons who possess the qualifications or experience as required under Rule 3.28 should be accepted as company secretaries of listed issuers. I believe this is not too much to ask for companies that are listed or intend to be listed on SEHK.

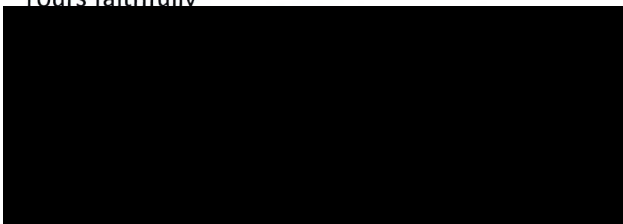
Further, the "relevant experience" assessment under the existing Note 2 to Rule 3.28 should be amended to pin-point clearly the key professional element to consider should be related to **corporate governance** as I proposed above and would strongly recommend for that. I would also suggest the Exchange to consult the opinion of the relevant professional bodies first in granting any waiver from strict compliance with Rule 3.28 in the coming future, which in my view, must be approved in super exceptional cases. I believe the relevant professional bodies would be happy to give their opinion with objective assessment to the Exchange for free.

The proposed *codification of the general waiver from strict compliance with Rule 3.28* is a wrong message sending to the market that the Exchange is preparing to loosen its standard of requirements for company secretaries. That is defeating the original purpose of introducing Rule 3.28 (and equivalent of the relevant GEM Board rule).

If the Exchange really wants our listed issuers to have quality corporate governance for sustainable development, please do not first downgrade the professional requirements for the facilitators who are functionally responsible for implementing the Listing Rules. Please don't rock the boat by codifying such substandard general waiver.

With due respect, kindly re-consider the proposed amendment to Rule 3.28.

Yours faithfully

A large black rectangular redaction box covering the signature area.

Company Secretary

A black rectangular redaction box covering the name of the Company Secretary.

I'm a fellow member of

- The Hong Kong Institute of Companies Secretaries
- Institute of Chartered Secretaries and Administrators in UK
- Hong Kong Institute of Certified Public Accountants
- CPA Australia

Declaration:

The above comment on the subject matter only represents my own view. It does not represent the view of the company I am working with or the organisations I professionally associated with.

I would like to keep my name anonymous for this submission.